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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERARDO CASTILLO, PAULA Y. CHOI, and ALAN D. SNOW

Appeal 2007-1641
Application 09/753,313
Technology Center 1600

Decided: January 25, 2008

Before DONALD E. ADAMS, NANCY J. LINCK, and RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims 4, 5, 10, and 28-32, the only claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

INTRODUCTION

The claims are directed to a method for the treatment of amyloid fibril formation, deposition, accumulation, aggregation and/or persistence in Alzheimer's disease and type II diabetes in a mammalian subject. Claims 4, 10, and 31 are illustrative:

4. A method for the treatment of amyloid fibril formation, deposition, accumulation, aggregation and/or persistence in Alzheimer's disease and type II diabetes in a mammalian subject, the method comprising the step of treating amyloid fibril formation, deposition, accumulation, aggregation and/or persistence in Alzheimer's disease and type II diabetes by administering to the subject a therapeutic amount of a substance selected from the group of substances consisting of green tea, green tea leaves and green tea extract, such that it is the therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils.

10. The method of Claim 4 further comprising, in the step of administering the therapeutic substance, additionally administering a therapeutic quantity of a substance selected from the group of substances consisting of, and commonly known as, ginkgo biloba, rosemary, gotu kola, bacopin, and ginseng.

31. A method for the treatment of amyloid fibril formation, deposition, accumulation, aggregation and/or persistence in Alzheimer's disease and type II diabetes in a mammalian subject, the method comprising the step of treating amyloid fibril formation, deposition, accumulation, aggregation and/or persistence in Alzheimer's disease and type II diabetes by administering to the subject a therapeutic amount of a substance produced by [a] process have [sic] the steps of

(1) water extraction, using water that is not boiling, of a substance selected from the group of substances consisting of green tea, green tea leaves and green tea extract, and

(2) separation and lyophilization of the supernatant from the extraction;

such that it is the therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils.

The Examiner relies on the following prior art references to show unpatentability:

Chatterjee	US 4,892,883	Jan. 9, 1990
Takami[1]	JP 10-175858	Jun. 30, 1998
Norin[2]	JP 10-24534	Sep. 14, 1998

Dennis J. Selkoe, "Alzheimer's Disease: Genes, Proteins, and Therapy," 81(2) *Physiological Reviews* 741 (2001).

The rejections as presented by the Examiner are as follows:

1. Claims 4, 5, 10, and 28-32 stand rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate written descriptive support for the phrase "a therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils".

2. Claims 31 and 32 stand rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate written descriptive support for the phrase "water extraction, using water that is not boiling".

3. Claims 4, 5, and 28-32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Norin.

4. Claims 4, 5, and 28-32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Takami.

5. Claims 4, 5, 10, and 28-32 stand rejected under 35 U.S.C § 103(a) as unpatentable over the combination of Norin, Takami, and Chatterjee.

We reverse rejection 1. We affirm all other grounds of rejection.

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[1] We refer to the computer-generated English translation of this document.
[2] We refer to the English translation of this document. Further, the Examiner and Appellants refer to this document as Norin, in reference to the Applicant Mitsui Norin Inc. (Norin ¶ 71), and not by the inventor's name Adachi (Norin ¶ 72). Accordingly, we will refer to this document as Norin.

DISCUSSION

1. Claims 4, 5, 10, and 28-32 stand rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate written descriptive support for the phrase "a therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils".

The Examiner finds that the limitation "such that it is the therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils" as it appears in claims 4, 28, and 31 is new matter.

Claim 4 is representative and is drawn to a method for the treatment of amyloid fibril formation, deposition, accumulation, aggregation and/or persistence in Alzheimer's disease and type II diabetes in a mammalian subject. The claimed method comprises the single step of administering to a subject a therapeutic amount of a substance selected from the group of consisting of:

1. green tea,
2. green tea leaves, and
3. green tea extract.

Claim 4 requires that it is the therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils.

Appellants argue that "the entire thrust of the disclosure is directed to amyloid inhibition by the therapeutic amount of substance administered. The claims do no more than make that thrust explicit as a limitation" (Br. 4-5). In response, the Examiner asserts that "amyloid inhibition does not necessarily or directly correlate to providing [a] . . . therapeutic amount of

the substance . . . that treats or disrupts the amyloid fibrils" (Answer 7-8). We disagree.

"Alzheimer's disease is characterized by the accumulation of a 39-43 amino acid peptide termed the beta-amyloid protein or Aβ, in a fibrillar form, existing as extracellular amyloid plaques and as amyloid within the walls of cerebral blood vessels" (Specification 1: 12-15). According to Appellants' Specification, "standardized green tea leaf extract has the ability to cause a disassembly/disruption of pre-formed amyloid fibrils of the Alzheimer's type" (Specification 2: 27-28). Appellants' Specification discloses that "[t]he methods of the invention are based, at least in part, in directly inhibiting amyloid fibril formation, causing disassembly/disruption and/or disaggregation of pre-formed amyloid fibrils" (Specification 7: 13-14).

Based on the forgoing we reverse the rejection of claims 4, 5, 10, and 28-32 35 U.S.C. § 112, first paragraph, as lacking adequate written descriptive support for the phrase "a therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils."

2. Claims 31 and 32 stand rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate written descriptive support for the phrase "water extraction, using water that is not boiling".

The Examiner finds that the phrase "produced by [a] process hav[ing] the steps of (1) water extraction, using water that is not boiling" as it appears in claim 31 is new matter and therefore rejects the claim under § 112, first paragraph for lack of written description. Appellants do not separately argue

the claims. Accordingly, we limit our discussion to claim representative 31. Claim 32 will stand or fall with claim 31. 37 C.F.R. § 41.37(c)(1)(vii).

Claim 31 is directed to a method for the treatment of amyloid fibril formation, deposition, accumulation, aggregation and/or persistence in Alzheimer's disease and type II diabetes in a mammalian subject. The claimed method comprises the single step of administering to the subject a therapeutic amount of a substance produced by a process having the steps of

(1) water extraction, using water that is not boiling, of a substance selected from the group of substances consisting of (1) green tea, (2) green tea leaves, and (3) green tea extract, and

(2) separation and lyophilization of the supernatant from the extraction.

Claim 31 requires that it is the therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils.

Appellants assert that Example 1 of the Specification discloses the extraction "in 1 ml of distilled water" (Br. 4). According to Appellants, since boiling water is not specified, a person of ordinary skill in the art would understand the "disclosure to mean that the water is not boiling" (*id.*). According to Appellants "[t]he specification simply teaches the use of distilled water, in its natural and ordinary meaning, which, as persons skilled in the art know, is at room temperature unless otherwise specified" (*id.*).

Claim 31 requires the extraction of a substance selected from the group of substances consisting of (1) green tea, (2) green tea leaves, and (3) green tea extract.

Example 1 of Appellants' disclosure states that "the powder within one gelatin capsule of standardized green tea extract obtained from a

commercial source . . . was extracted in 1 ml of distilled water and pelleted using a microcentrifuge . . . . The supernatant was then taken and lyophilized" (Specification 30: 11-15). Stated differently, a commercially available standardized green tea extract powder was solubilized, any remaining particulate material was precipitated, and the resulting supernatant was then used for further study. Example 1 does not speak of green tea or green tea leaves. Example 1 speaks only of a commercially available green tea extract. Example 1 does not state whether the water was cold, warm, hot, boiling, or room temperature – it simply states that "distilled water" was used. Appellants now invite us to construe the term "distilled water" as it applies to a commercially available preparation of green tea extract, to extend to the preparation of an extract from green tea and green tea leaves. In doing so, Appellants invite us to construe the term "distilled water" to mean "room temperature" or at least "non-boiling" distilled water. We decline Appellants' invitation.

"The purpose of the written description requirement is to prevent an applicant from later asserting that he invented that which he did not; the applicant for a patent is therefore required 'to recount his invention in such detail that his future claims can be determined to be encompassed within his original creation.'" *Amgen Inc. v. Hoechst Marion Roussel Inc.*, 314 F.3d 1313, 1330 (Fed. Cir. 2003) (citing *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1561 (Fed. Cir. 1991)). While there is no requirement that the claimed invention be described in the identical wording that was used in the Specification, there must be sufficient disclosure to show one of skill in this art that the inventor "invented what is claimed." *See Union Oil Co. of California v. Atlantic Richfield Co.*, 208 F.3d 989, 997 (Fed. Cir. 2000).

The written description must be of sufficient detail to show possession of the full scope of the invention. *Pandrol USA LP v. Airboss Railway Products Inc.*, 424 F.3d 1161, 1165 (Fed. Cir. 2005). In this case, Appellants direct our attention to Example 1 which speaks only of a commercially available green tea extract. Example 1 does not address the extraction of green tea and green tea leaves thus Example 1 does not address the full scope of the claimed invention. Reviewing the Specification in the context of the full scope of the claimed invention, we find that extractions can be performed using water or alcohol (*see e.g.*, Specification 7: 35). As to water extraction, the Specification is completely silent with regard to the "temperature" of the water that is used to perform the extraction. Thus, contrary to Appellants' assertion, upon reading Appellants' disclosure a person of ordinary skill in the art would be led to the conclusion that water of any temperature may be used to perform the extraction according to the claimed invention.

As there is no disclosure in Appellants' Specification with respect to the temperature of the water used to perform the extraction, we find that the newly added limitation requiring "water that is not boiling" represents a non-disclosed species within the scope of the claimed and disclosed invention that represents new matter. While Appellants' representative asserts that "distilled water" represents water that is non-boiling there is no evidence on this record to support this position. In our opinion, a person of ordinary skill in the art would not recognize that dissolving a green tea extract capsule in water is the same as extracting green tea. Accordingly, we affirm the rejection of claim 31 under 35 U.S.C. § 112, first paragraph, as lacking

adequate written descriptive support for the phrase "water extraction, using water that is not boiling". Claim 32 falls with claim 31.

3. Claims 4, 5, and 28-32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Norin. The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Therefore, we limit our discussion to representative claim 4. Claim 4 is discussed above.

Norin teaches:

1. a "diminishing agent and its effects on the toxicity against nerve cells caused by β-amyloid" (Norin ¶ 0001);
2. that the diminishing agent includes tea polyphenol as an active ingredient (*id.*);
3. a "method to diminish toxicity against nerve cells caused by β-amyloid protein by prescribing the diminishing agent to patients whose nerve cells are impinged by the toxicity of β-amyloid protein" (*id.*);
3. that "[t]he developing mechanism of Alzheimer's disease is widely believed to be attributed to th[e] toxicity of depositional β-amyloid protein against the nerve cells" (Norin ¶ 0003);
4. that the tea polyphenol "is tea catechin" (Norin ¶ 0007);
5. that epicatechin gallate (ECg) and epigallocatechin gallate (EGCg) are exemplary tea catechins (Norin ¶ 0016 and ¶ 001A);
6. "tea polyphenol contains EGCg and ECg as the main ingredients, and can be produced from tea leaves" (Norin ¶ 0027);
7. the preparation of a tea extract by boiling tea leaves, such as green tea leaves, in e.g., hot water (*id.*).

Taken as a whole, Norin teaches the preparation of a green tea extract comprising EGCg and ECg as main ingredients and the administration of this preparation to Alzheimer's patients to treat nerve cell toxicity caused by β-amyloid. An "object" of Appellants' invention is the use of "catechins, including but not limited to . . . epigallocatechin gallate [(EGCg)] . . . and/or epicatechin gallate [(ECg)] . . . contained within green tea, green tea leaves and extracts or derivatives thereof . . . for the treatment of amyloid formation, deposition, accumulation and/or persistence in Alzheimer's disease, type II diabetes and other amyloidoses" (Specification 5: 13-18).

Thus, Norin teaches the treatment of the same patient population (Alzheimer's patients) with a therapeutically effective amount[3] of the same composition as set forth in Appellants' claimed invention. While Norin does not expressly teach that the substance administered will treat or disrupt the amyloid fibrils, absent evidence to the contrary, it is reasonable to presume that the administration of Norin's composition will inherently have the property of treating or disrupting amyloid fibrils since it comprises the same substance as instantly claimed.

Appellants assert that Norin does not mention fibril formation and "only teaches narrowly that a certain kind of nerve cell toxicity that is supposedly caused by beta-amyloid protein, can possibly be reduced with tea polyphenols" (Br. 5). We note, however, that

> "[i]nherency is not necessarily coterminous with knowledge of those of ordinary skill in the art. Artisans of ordinary skill may not recognize the inherent characteristics or functioning of the prior art." [*In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002)].; *see also Schering Corp. v. Geneva*

[3] Appellants do not dispute and therefore concede that Norin's effective dosage is the same as that set forth in Appellants' claimed invention.

> *Pharms.*, 339 F.3d 1373, 1377 (Fed.Cir. 2003) (rejecting the contention that inherent anticipation requires recognition in the prior art) (citing *In re Cruciferous Sprout Litig.*, 301 F.3d at 1351; *MEHL/Biophile*, 192 F.3d at 1366).

Perricone v. Medicis Pharm. Corp., 432 F.3d 1368, 1376 (Fed. Cir. 2005). "'Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claims limitations, it anticipates.'" *Id.* (citation omitted).

We recognize Appellants' reliance on Wang[4] to teach "that no necessary inferences may be drawn from any study of Aβ mediated neurotoxicity" (Br. 5). Similarly, Appellants rely on Zhang[5] to teach that nonfibrilized and fibrilized Aβ are equally toxic (Br. 5-6). According to Appellants the teachings of Wang and Zhang are "further refutation of anything that might be regarded as a 'necessary' suggestion that inhibition of Aβ neurotoxicity may be useful in treating Aβ fibril formation, deposition, accumulation and/or persistence" (Br. 6). Initially, we note that both Wang and Zhang post-date Appellants' December 29, 2000 effective filing date. Nevertheless, we point out that Appellants have missed the point.

As discussed above, inherency does not require that a person of ordinary skill in the art recognize the inherent characteristics or functioning of the prior art. *Perricone*, 432 F.3d at 1376. On this record, Norin teaches

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[4] Wang, *The Neuroprotective Effects of Phytoestrogens on Amyloid β Protein-induced Toxicity Are Mediated by Abrogating the Activation of Caspase Cascade in Rat Cortical Neurons*, 276(7) J. Biol. Chem. 5287-95 (2001).

[5] Zhang, *Selective Cytotoxicity of Intracellular Amyloid β Peptide 1-42 Through p53 and Bax in Cultured Primary Human Neurons*, 156(3) J. Cell Biol, 519-29 (2002).

the treatment of the same patient population (Alzheimer's patients) with a therapeutically effective amount of the same composition as set forth in Appellants' claimed invention. While a person of ordinary skill in the art may not have appreciated that by performing Norin's method to treat the effects of β-amyloid toxicity on nerve cells they were also treating or disrupting amyloid fibrils, the claimed method is no less anticipated by Norin. Accordingly, we disagree with Appellants' assertion that claimed invention is "directed to a precise set of steps that is no where disclosed in any of the cited references" (Br. 7).

"[I]n an *ex parte* proceeding to obtain a patent, . . . the Patent Office has the initial burden of coming forward with some sort of evidence tending to disprove novelty." *In re Wilder*, 429 F.2d 447, 450 (CCPA 1970). Nevertheless, "when the PTO shows *sound basis* for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990) (emphasis added). Appellants have failed to carry their burden. Accordingly, we affirm the rejection of claim 4 under 35 U.S.C. § 102(b) as being anticipated by Norin. Claims 5 and 28-32 fall together with claim 4.

4. Claims 4, 5, and 28-32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Takami. The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Therefore, we limit our discussion to representative claim 4. Claim 4 is discussed above.

Takami teaches:

1. the treatment of Alzheimer's disease by the toxicity of beta amyloid protein by administering an active oxygen generating inhibitor (Takami ¶¶ 0008 and 0013);

2. the active agent contains tea catechins extracted from warm or hot water (Takami ¶ 0008);

3. that green tea extracts which have a catechin concentration about 85% (Takami ¶ 0010);

4. that "tea catechin means the catechins, i.e. epicatechin gallate, contained to these tea, epigallocatechin gallate, epicatechin, epigallocatechin, or these two kinds or more. Epicatechin gallate or epigallocatechin gallate is especially considered to be a desirable thing" (Takami ¶ 0009).

Thus, Takami teaches the treatment of the same patient population (Alzheimer's patients) with a therapeutically effective amount[6] of the same composition as set forth in Appellants' claimed invention. While Takami does not expressly teach that the substance administered will treat or disrupt the amyloid fibrils, absent evidence to the contrary, it is reasonable to presume that the administration of Takami's composition will inherently have the property of treating or disrupting amyloid fibrils since it comprises the same substance as instantly claimed.

Appellants assert that Takami does not mention fibril formation and "only teaches narrowly that a certain kind of active oxygen toxicity can be reduced by disclosed extracts of green tea containing various catechins" (Br. 5). According to Appellants, Takami makes "[n]othing beyond a passing reference . . . about Alzheimer's disease, and certainly nothing about treating amyloid fibrils" (*id.*). For the reasons set forth above we are not persuaded.

[6] Appellants do not dispute and therefore concede that Norin's effective dosage is the same as that set forth in Appellants' claimed invention.

We find that the Examiner has provided the evidence necessary to establish a prima facie case of anticipation and has properly shifted the evidentiary burden to Appellants. For the same reasons as set forth above, Appellants have failed to carry their burden. Accordingly, we affirm the rejection of claim 4 under 35 U.S.C. § 102(b) as being anticipated by Norin. Claims 5 and 28-32 fall together with claim 4.

5. Claims 4, 5, 10, and 28-32 stand rejected under 35 U.S.C § 103(a) as unpatentable over the combination of Norin, Takami, and Chatterjee. Appellants separately argue claims 4, 28, and 31. Accordingly, we limit our discussion to claims 4, 28, and 31. Claims 5 and 10 will stand or fall with claim 4. Claims 29 and 30 will stand or fall with claim 28. Claim 32 will stand or fall with claim 31. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner relies on Norin and Takami as set forth above (Answer 6). The Examiner finds that Norin and Takami do not teach the "inclusion of the herbal agents instantly recited in claim 10" (*id.*). To make up for this deficiency, the Examiner relies on Chatterjee to teach "that administration of *Ginkgo biloba* is useful in the therapy of Alzheimer's disease" (*id.*).

Based on this evidence the Examiner concludes that "[i]t would have been obvious to employ a therapeutically effective amount of green tea extract – such as beneficially taught by . . . Norin and Takami . . . for administering to a subject suffering form Alzheimer's disease" (*id.*) We agree. As Appellants do not separately argue claims 10, 30, and 32 we do not address the Examiner's finding that Chatterjee's teaches that *Ginkgo biloba* is useful in the therapy of Alzheimer's disease (*id.*)[7].

[7] We recognize Appellants' assertion that "none of the cited references, nor any combination of them, make obvious the combination of steps and

Claim 4:

Appellants assert that "[c]laim 4 recites two distinct method steps not disclosed in any cited reference" (Br. 9). According to Appellants the first is "the step of treating amyloid fibril formation, deposition, accumulation, aggregation and/or persistence in Alzhemier's disease and type II diabetes" (*id.*). The second is that "it is the therapeutic amount of the substance administered that treats or disrupts the amyloid fibrils" (*id.*). Neither of the phrases cited by Appellant is an actual step. Instead, the only actual step recited in claim 4 is "administering to the subject a therapeutic amount of a substance selected from the group of substances consisting of green tea, green tea leaves and green tea extract." Both Norin and Takami teach a method that comprises this step and therefore anticipate claim 4. As "anticipation is the epitome of obviousness" *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716 (Fed. Cir. 1984).

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substances in dependent claims 10, 30 and 32, as no combination of references teaches or suggests all of the steps and substances of these claims. Claims 10, 30 and 32, as properly read, contain all the limitations of there respective parent claims, and as such, all cited references fail to suggest the combination of steps and substances actually claimed" (Br. 8-9). As set forth in 37 C.F.R. 41.37(vii) "[a]ny claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim." Appellants have not separately identified claims 10, 30, and 32 under a separate subheading or provided an argument that does more than merely point out what the claims recite. Accordingly, they stand or fall together with the claim from which they depend.

We affirm the rejection of claim 4 under 35 U.S.C § 103(a) as unpatentable over the combination of Norin, Takami, and Chatterjee. Claims 5 and 10 fall together with claim 4.

Claim 28:

Appellants assert that "[c]laim 28 includes an express recitation that the fibrils to be treated are already existing" (Br. 10). According to Appellants' Specification "Alzheimer's disease is characterized by the accumulation of a 39-43 amino acid peptide termed the beta-amyloid protein or Aβ, in a fibrillar form, existing as extracellular amyloid plaques and as amyloid within the walls of cerebral blood vessels (Specification 1: 12-15). Thus, when one is treating an Alzheimer's patient, one is treating a person wherein the fibrils to be treated are already existing. Both Norin and Takami teach a method that comprises this step and therefore anticipate claim 28. *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716 (Fed. Cir. 1984) ("anticipation is the epitome of obviousness").

We affirm the rejection of claim 28 under 35 U.S.C § 103(a) as unpatentable over the combination of Norin, Takami, and Chatterjee. Claims 29 and 30 fall together with claim 28.

Claim 31:

Appellants assert that claim 31 recites "several new process steps by which the therapeutic substances are to be derived" (Br. 10). Specifically, Appellants assert that "[c]laim 31 now requires that the substances to be administered be created by (1) a water extraction using water that is not boiling of one [o]f the substance selected from green tea, green tea leaves,

and green tea extract" (*id.*). However, as discussed above Takami teaches this limitation of claim 31, by teaching that the active agent contains tea catechins extracted from warm or hot water (Takami ¶ 0008). Accordingly, we are not persuaded by Appellants' argument.

Appellants also assert that claim 31 also requires the separation and lyophilization of the supernatant from the extract (Br. 10). Takami teaches that the green tea extract can be lyophilized ("mad[e] . . . dry by freeze drying . . . and providing as desiccation powder") (Takami ¶0012). Accordingly, we are not persuaded by Appellants' argument.

Thus, contrary to Appellants' assertion Takami teaches a method that comprises the steps set forth in claim 31. *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716 (Fed. Cir. 1984) ("anticipation is the epitome of obviousness"). We affirm the rejection of claim 31 under 35 U.S.C § 103(a) as unpatentable over the combination of Norin, Takami, and Chatterjee. Claim 32 falls together with claim 31.

CONCLUSION

In summary, we reverse rejection 1. We affirm all other grounds of rejection.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Ssc:

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